



**FOR CLERK USE ONLY**  
 City Council  
 Item No. 4

## CITY COUNCIL AGENDA FACT SHEET

City Attorney \_\_\_\_\_

October 19, 2010

Department \_\_\_\_\_

Requested Date \_\_\_\_\_

**1. Request:**Council Approval ☒Information Only/  
Presentation ☐Other (specify) ☐Hearing ☐**2. Requested Action:**

Price-Control Resolution

**3. Fiscal Impact:**

Revenue:

Increase ☐Decrease ☐

Source: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

Cost:

Increase ☐Decrease ☐

Source: N/A

Amount: \$ \_\_\_\_\_

Does Not Apply ☒**4. Reviewed By:**

Finance Dept. on \_\_\_\_\_

By: \_\_\_\_\_

Comments: \_\_\_\_\_

City Attorney on \_\_\_\_\_

10-8-10

By: J. Lyon

Comments: \_\_\_\_\_

*Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.*

**CLERK USE ONLY:**

CITY COUNCIL DATE: \_\_\_\_\_

Action ☐Filing ☐Consent ☐Presentation ☐Hearing ☐

Other(specify) \_\_\_\_\_

Reviewed by: City Clerk \_\_\_\_\_

City Manager \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**CITY COUNCIL  
AGENDA REPORT**

**SUBJECT: RESOLUTION TO EXTEND PROVISIONS OF CALIFORNIA PENAL CODE SECTION 396(c) RELATING TO UNFAIR BUSINESS PRACTICES BY CONTRACTORS WITHIN THE CITY OF CALEXICO DURING AND SHORTLY AFTER THE PROCLAMATION OF A STATE OF EMERGENCY FOR AN ADDITIONAL 30-DAY PERIOD**

**AGENDA DATE:** October 19, 2010

**PREPARED BY:** Jennifer Lyon, City Attorney

**APPROVED FOR AGENDA BY:** Victor Carrillo, City Manager

**RECOMMENDATION:** That the City Council consider the resolution to extend for an additional 30-day period, the application of California Penal Code Section 396(c), prohibiting, for a period of 180 days after the declaration of an emergency resulting from an earthquake, a contractor from selling or offering to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation of emergency, except under circumstances specified in Penal Code Section 396(c).

**BACKGROUND INFORMATION:** On April 4, 2010, the City Manager, as Director of Emergency Services of the City of Calexico, and the City Council of the City of Calexico, proclaimed a state of emergency in the City of Calexico due to an earthquake of a magnitude of 7.2 commencing on or about 3:40 p.m. on the day of 4<sup>th</sup> day of April, 2010. On April 5, 2010, Imperial County and Governor Schwarzenegger declared a state of emergency in the Imperial Valley. On April 6, 2010, the City Council ratified the April 4<sup>th</sup> declarations. Said proclamations were made pursuant to California Government Code Sections 8558(b), 8625, and 8630. The earthquake and the continuing aftershocks have caused/continue to cause considerable damage and created conditions that risk the health and safety of the citizens of Calexico. Since April 6, 2010, the City Council has continued to adopt resolutions extending the local state of emergency at every regular meeting.

On April 20, 2010, the City Council adopted a resolution informing citizens that certain practices regarding unfair competition in pricing for certain goods and services in the local economy were prohibited by state law, most notably California Penal 396, and were punishable by imprisonment, fines, and in some cases, suspension of professional licenses. There have been subsequent aftershocks and the threat to property, lives, and welfare of citizens due to the April 4, 2010 earthquake continues to exist in the City of Calexico as of October 30, 2010.

On September 21, 2010, the City Council of the City of Calexico adopted a resolution extending the effects, including penalties, of the provision of California Penal Code Section 396(c) for an additional 30-day period pursuant to California Penal Code Section 396(e).

**DISCUSSION:** The City Council of the City of Calexico may desire to further extend the protections provided to persons affected by the emergency from unfair competition and opportunistic business practice resulting from excessive and unjustified increases in prices for vital goods, services, and accommodations charged during or shortly after a declared state of emergency by extending the effects, including penalties, of the provision of California Penal Code Section 396 for an additional 30-day period pursuant to California Penal Code Section 396(e). If Council wishes to extend this law, then the attached resolution can be approved.

**Future Action:**

The provisions of PC Section 396(c) may be further extended by the City Council for additional 30-day periods if deemed necessary to protect the lives, property, or welfare of the citizens. If deemed necessary, a resolution will be prepared for the November 16, 2010 agenda to extend the effects of the State law.

This proposed resolution extends, for an additional 30 days, the provisions of California Penal Code Section 396(c) prohibiting contractors from selling any repair or reconstruction services or any services used in emergency cleanup for more than 10% of the price charged prior to the emergency.

Attachment: Resolution Extending the Effects of California Penal Code 396(c)

**RESOLUTION NO. \_\_\_\_**

**RESOLUTION TO EXTEND PROVISIONS OF CALIFORNIA PENAL CODE SECTION 396(c) RELATING TO UNFAIR BUSINESS PRACTICES WITHIN THE CITY OF CALEXICO DURING AND SHORTLY AFTER THE PROCLAMATION OF A STATE OF EMERGENCY FOR AN ADDITIONAL 30-DAY PERIOD**

WHEREAS, the earthquake which occurred on April 4, 2010 having a magnitude of 7.2 caused significant structural damage to buildings and public infrastructure, including the water and wastewater treatment plants in the City of Calexico, creating a threat to public health and safety; and

WHEREAS, on April 4, 2010, the City Manager, the City Council, and the City's Disaster Council, acting pursuant to Government Code section 8630 and CMC section 2.36.060, proclaimed the existence of a local emergency based on conditions of extreme peril to the safety of persons and property caused by the earthquake; and

WHEREAS, Upon the proclamation of a state of emergency from an earthquake by the executive officer of a city, and for a period of 180 days following that declaration, California Penal Code section 396(c) makes it unlawful for contractors to charge more than 10 percent above the prices charged prior to the proclamation of a state of emergency; and

WHEREAS, on September 21, 2010, the City Council, pursuant to California Penal Code section 396(c), adopted a resolution extending the price and rate restrictions of Penal Code section 396, applicable to contractors, for an additional thirty (30) days, beginning on October 5, 2010 and ending November 3, 2010.

WHEREAS, California Penal Code section 396(e) provides for the extension of the provisions of California Penal Code section 396(c) for additional thirty (30) day periods if deemed necessary to protect the lives, property, or welfare of the citizens; and

WHEREAS, due to aftershocks and continuing damage to property in the City of Calexico, the conditions threatening the lives, property and welfare of the citizens existing at the time the state of emergency was proclaimed, continue to exist; and

WHEREAS, the City Council has adopted resolutions extending the local state of emergency continuously since April 6, 2010.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Calexico hereby finds and declares:

1. A continuing emergency has existed within the City since April 4, 2010 as the result of earthquake damage to various public facilities.
2. As of November 3, 2010, there is still an urgent need to repair property, there have been several aftershocks in the vicinity, and there continues to exist a threat of earthquakes, aftershocks, and resulting damage that threatens the lives, property and welfare of the citizens.

3. The provisions of California Penal Code section 396(c), make it unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation of emergency, subject to certain specified exceptions to the 10% limit, set out in California Penal Code section 396(c), are hereby extended for an additional thirty (30) day period beginning November 4, 2010 and ending December 3, 2010, pursuant to California Penal Code section 396(e). Any violations of this law shall be reported to local authorities for investigation and possible prosecution.

PASSED, ADOPTED, AND APPROVED by the City Council of the City of Calexico, California, at a regular meeting thereof, this 19th day of October, 2010.

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John Moreno, Mayor

ATTEST:

\_\_\_\_\_  
Lourdes Cordova, City Clerk

Approved as to Form:

\_\_\_\_\_  
Jennifer M. Lyon, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL )  
CITY OF CALEXICO )

I, Lourdes Cordova, City Clerk of the City of Calexico, do hereby certify under penalty of perjury that the foregoing Resolution No. 10-\_\_\_\_\_ was duly adopted by the City Council at a meeting of said City Council held on the 19th day of October, 2010, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
Lourdes Cordova, City Clerk  
City of Calexico